

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

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3 PRAGE, 16-CV-01627 (CBA)  
4 Plaintiff, United States Courthouse  
5 - versus - Brooklyn, New York  
6 KAVULICH & ASSOCIATES, P.C., March 08, 2017  
7 et al, 3:00 p.m.  
8 Defendants.

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10 TRANSCRIPT OF CIVIL CAUSE FOR PREMOTION CONFERENCE  
11 BEFORE THE HONORABLE CAROL B. AMON  
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES

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19 Economy Project

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Proceedings recorded by mechanical stenography. Transcript  
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## Pre-Motion Conference

1 (In open court.)

2 COURTROOM DEPUTY: 16-CV-1627, Prage V. Kavulich &  
3 Associates, on for premotion conference.

4 THE COURT: All right. Will the parties state their  
5 appearances, please.

6 MR. KESHAVARZ: Ahmad Keshavarz for the plaintiff.

7 MS. SHIN: Susan Shin, Economy Project, also for the  
8 plaintiff.

9 MR. PASHKIN: Mitchell Pashkin for the defendants,  
10 your Honor. Good afternoon.

11 THE COURT: Good afternoon. Now I understand  
12 originally that plaintiff had wanted to move for summary  
13 judgment but you realize there is a potentially dispositive  
14 case before the Second Circuit.

15 MR. PASHKIN: That's correct.

16 THE COURT: And do you agree if the Second Circuit  
17 opposed the decision of the judge of the Southern District,  
18 this should be dismissed?

19 MR. KESHAVARZ: As to one of the claims. There are  
20 two claims, one which might be governed by Arias on appeal.  
21 And the second claim about twice executing on the judgment on  
22 my client's exempt money after he won in state court.

23 The Court says the money is exempt. They then  
24 execute on his bank account again. I sue them and they  
25 execute his bank account again. But those have nothing to do

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1 with Arias.

2 THE COURT: What kind of cause of action?

3 MR. KESHAVARZ: That's FDCPA violation, unfair and  
4 inconscionable conduct.

5 THE COURT: The decision in the Second Circuit  
6 wouldn't cover that?

7 MR. KESHAVARZ: No, it wouldn't affect that issue.

8 THE COURT: You want to stay this case pending the  
9 decision in the Circuit.

10 MR. KESHAVARZ: I think it would make more sense.  
11 Because one of the issues will be dispositive on one of the  
12 claims. We could do briefing, and then the Second Circuit  
13 could rule, and it could have an effect one way or another on  
14 one of our main claims. I don't know if it would be most  
15 efficient way to have the motion. But we had a deadline to  
16 file a letter for a premotion conference to reserve our  
17 rights, I want to make sure we do that. Oral argument is in  
18 April. Obviously we can't tell how long the Second Circuit  
19 might take to issue an opinion

20 THE COURT: What is your position, Mr. Pashkin?

21 MR. PASHKIN: It's hard to say whether the Second  
22 Circuit decision would be dispositive because I think the  
23 Second Circuit can go three ways. Of course they could just  
24 reverse the lower court decision, but they could uphold it,  
25 and it depends on how they uphold it. For example, the lower

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1 court decision was based on substantially two factors. One  
2 was that the debt collector in that case, they followed the  
3 procedure authorized by state law; and therefore, they did not  
4 commit any misrepresentations. But the other aspect of the  
5 case, was the principal that when the state court is available  
6 to provide the protections to a consumer that the FDCPA is  
7 designed to provide, then the FDCPA is not applicable.

8 So if the Second Circuit relies on that portion of  
9 the decision, then there is really nothing left of this aspect  
10 of the case.

11 But, if they don't solely rely on that and for  
12 example they turn to whether there were false  
13 misrepresentations or could be false representations, even  
14 when a debt collector is complying with state law, then what  
15 we could be left with this cause of action no matter how the  
16 Second Circuit rules because it could be still be fact-driven.

17 For example, the Second Circuit in Eades V. Kennedy,  
18 has come out and said in the context of litigation papers,  
19 when we file papers in a state court, they've already said  
20 pretty much that there could be a cause of action if the  
21 filing is frivolous or baseless, versus there is no cause of  
22 action if the only problem is that the debt collector did not  
23 have or may not have had sufficient evidence at the time they  
24 filed. So, we could still be back here with a fact-driven  
25 determination as to whether the filings by the defendants were

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1 frivolous or baseless, or just, perhaps lack sufficient  
2 evidence.

3 THE COURT: The question is, do you object to a  
4 stay?

5 MR. PASHKIN: You know, no, I don't.

6 THE COURT: Okay. Then I'll just stay any further  
7 proceedings in terms of having to file this motion you're on  
8 record if you want to file it. And plaintiffs counsel has  
9 responsibility of advising the Court as soon as that case is  
10 decided so we can get this back on the record if we need to.

11 MR. PASHKIN: For the record, your Honor, I would  
12 also like to file a cross motion for summary judgment when the  
13 time comes.

14 THE COURT: Did you file a letter indicating that?

15 MR. PASHKIN: No, because before the time expired to  
16 file the letters you had ordered this conference, so I did not  
17 take that step, but basically it would be --

18 THE COURT: Why don't you put into a letter now what  
19 your motion would be about.

20 MR. PASHKIN: Okay.

21 THE COURT: All right, thank you.

22 MR. KESHAVARZ: Thank you, your Honor.

23 (Matter concluded.)  
24  
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